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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189474
Party	Defendant Bernadette Cooper and Joyce Irby
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Submission	Motion to Quash
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Date	10/28/2010
Attachments	Motion to Quash KLYMAXX.pdf ( 2 pages )(74262 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cheryl Cooley,	)	
	)	Opposition no.: 91189474
Opposer,	)	
	)	Mark: KLYMAXX
v.	)	
	)	Serial no.: 77/571,759
	)	
Bernadette Cooper and	)	
Joyce Irby,	)	
	)	
Applicants.	)	

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**Motion to Quash Plaintiff's Notice of Taking Trial Testimony**

Applicants, Bernadette Cooper and Joyce Irby, by and through their undersigned attorney hereby submit this Motion to Quash Plaintiff's Notice of Taking Trial Testimony pursuant to 37 CFR § 2.120 and TMBP §521:

Opposer was required under the Board's ruling on August 25, 2010 to serve its pretrial disclosures on Applicants within 30 days of the mailing date of the Board's order denying Applicant's Motion to Dismiss, or by September 25, 2010. No pretrial disclosures have been served on Applicants to date.

On October 20, 2010, Plaintiff's counsel mailed its notice of intent to take the deposition of Cheryl Cooley at 10am on November 1, 2010 in Old Pasadena, California. The notice was received by Applicant's counsel on October 25, 2010, seven days before the scheduled date of the deposition.

This notice is not reasonable because Plaintiff did not serve on Applicants, its pretrial disclosures prior to the September 21, 2010 deadline or at all, to date. Allowing

Ms. Cooley's deposition to proceed as scheduled will impose an undue burden on Applicants and prejudice their defense. Applicants' counsel does not have adequate time to prepare for cross examination of Ms. Cooley even assuming, for the sake of argument, that counsel is available on November 1, 2010 to travel to Pasadena and attend the deposition. Had Applicants' counsel been served with pretrial disclosures by Plaintiff, counsel would have been prepared for the taking of depositions and might have been prepared to attend the deposition even on such short notice. However, no pretrial disclosures were served, as required by the Board.

Therefore, Applicant respectfully requests that the Board quash Opposer's untimely Notice of Taking Deposition of Cheryl Cooley.

Respectfully submitted,

Date: October 27, 2010

By: Jamie Shelden

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

#### MOTION TO QUASH PLAINTIFF'S NOTICE OF TAKING TRIAL TESTIMONY

is being served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, addressed as follows and by email to jscherer@jfsny.com:

Jack F. Sherer  
99 Park Avenue, 3<sup>rd</sup> Floor  
New York, NY 10016

Jamie Shelden  
Jamie R. Shelden